

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH ROWLERY, JR.,

Plaintiff,

Case No. 12-cv-15292

v.

Paul D. Borman
United States District Judge

Paul J. Komives
United States Magistrate Judge

GENESEE COUNTY, ROBERT WINSTON,
DAVID SCHMIEDER, E. MARTIN,
SCOTT PRITCHARD, SCOTT MANGRIM,
BRANDON SZEMITES, ROBERT NUCKOLLS,
and RYAN DOBBS,

Defendants.

/

ORDER (1) ADOPTING MAGISTRATE JUDGE PAUL J. KOMIVES
SEPTEMBER 27, 2013 REPORT AND RECOMMENDATION (ECF NO. 50),
(2) SETTING ASIDE CLERK'S ENTRY OF DEFAULT (ECF NO. 40), and
(3) ORDERING PLAINTIFF TO EFFECT SERVICE OF PROCESS ON DEFENDANT
E. MARTIN ON OR BEFORE DECEMBER 6, 2013

On September 27, 2013, Magistrate Judge Paul Komives issued a Report and Recommendation that this Court find that Defendant E. Martin was never properly served and further recommending that the Court set aside the Clerk's Entry of Default against Defendant E. Martin and either dismiss the action against E. Martin without prejudice or order that he be served within a specified time. (ECF No. 50, Report and Recommendation.) On October 11, 2013, Plaintiff filed an Objection to the Report and Recommendation (ECF No. 51) and Defendants Dobbs, Genesee County, Mangrim, Nukous (Nuckolls), Pritchard, Schmieder, Syzmitus and Winston filed a response to Plaintiff's Objection (ECF No. 52.) This Court reviews *de novo* the

portions of the report and recommendation to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district “court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* Having conducted a *de novo* review of the parts of the Magistrate Judge’s Report and Recommendation to which valid objections have been filed pursuant to 28 U.S.C. § 636(b)(1), the Court ADOPTS the Report and Recommendation, SETS ASIDE the Clerk’s Entry of Default against Defendant Martin (ECF No. 40) and ORDERS Plaintiff to properly serve Defendant Martin on or before December 6, 2013.

The Court agrees with Magistrate Judge Komives’s conclusion that Plaintiff has failed to establish that the attempt to serve Defendant Martin by leaving a copy of the summons and complaint at the Genesee County Jail with Pam Cunningham of the Genesee County Sheriff’s Department Administrative Office complied with Fed. R. Civ. P. 4(e). There is no dispute that service was not attempted at Martin’s place of abode, that he has not been personally delivered a copy of the summons and complaint and that he has not acknowledged service by mail. Nor has Plaintiff established that Martin is otherwise personally aware of this lawsuit.

Defendants maintain, and Plaintiff does not dispute, that Defendant Martin was no longer employed by the Genesee County Sheriff’s Department at the time Plaintiff attempted to serve him by leaving a copy of the summons and complaint with Pam Cunningham at the Genesee County Jail on February 20, 2013. (ECF No. 41, Objection to Plaintiff’s Request for Clerk’s Entry of Default.) Plaintiff has not established that Pam Cunningham was authorized to accept service on behalf of a former employee, or specifically on behalf of Martin. Indeed, as to two other Defendants whom Plaintiff believed were no longer employed at the time service was attempted, Plaintiff recognized the need to serve them differently, attempted to do so and sought leave of Court for alternate service

when those efforts were unsuccessful. (ECF No. 17, Emergency Motion for Alternate Service and Extension of Summons for Individual Defendants Robert Winston and David Schmieder.)

Accordingly, the Court adopts the Magistrate Judge's recommendation to set aside the Clerk's Entry of Default (ECF No. 41) and, pursuant to Fed. R. Civ. P. 4(m), ORDERS Plaintiff to properly serve Defendant Martin on or before December 6, 2013.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: November 7, 2013

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 7, 2013.

s/Deborah Tofil
Case Manager